

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* MULLINS, Minor.

UNPUBLISHED  
July 21, 2016

No. 331729  
Wayne Circuit Court  
Family Division  
LC No. 14-515873-NA

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Before: SHAPIRO, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to his daughter, LGM, pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (failure to rectify other conditions causing the child to come within the court's jurisdiction), (g) (failure to provide proper care and custody), (h) (incarceration of parent), and (j) (reasonable likelihood of harm). Because the trial court did not clearly err by terminating respondent's parental rights, we affirm.

I. FACTS

On February 28, 2014, LGM was removed from respondent's home and placed with her maternal grandmother. At that time, LGM was less than two years old. The conditions prompting LGM's removal included respondent's drug use, as a result of which he was unable to provide proper care for LGM. Respondent also suffered from anxiety requiring medication, he had declined to participate in substance abuse services, he had a lengthy criminal history involving 11 prior convictions, and there was an active personal protection order (PPO) against respondent pertaining to LGM's maternal grandmother. At the adjudication hearing on March 5, 2014, respondent pleaded guilty to the allegations in the petition and the trial court assumed jurisdiction over LGM.

An initial parent agency treatment plan was developed to address respondent's barriers to reunification, which included needs in the areas of anger management, emotional stability, parenting skills, and substance abuse. The treatment plan called for respondent to attend anger management classes, undergo a psychological evaluation and engage in individual therapy, complete parenting classes, attend weekly parenting time sessions, participate in substance abuse therapy and submit to weekly drug screens. At a dispositional review hearing on April 4, 2014, the trial court ordered respondent to comply with and benefit from the treatment plan.

However, respondent was arrested and incarcerated shortly after the dispositional review hearing for a probation violation. Upon his release, the foster care worker referred respondent for services, including a substance abuse program. But, while out of jail, respondent did not participate in the offered services and he did not visit LGM. In total, respondent was out of jail for approximately one month during the summer of 2014, but he made no progress or effort on his treatment plan during that time. Then, on August 6, 2014, respondent was arrested and charged with armed robbery. He later pleaded guilty to unarmed robbery and received a prison sentence of 2 to 15 years. Respondent spent the remainder of this case in prison, and he has an earliest release date in August of 2016.

While respondent was incarcerated, the trial court continued to order that the Department of Health and Human Services (DHHS) make reasonable efforts to reunify respondent and LGM. Relevant to these efforts, the foster care worker, Dominique Page, testified that initially respondent was not eligible to participate in prison services pursuant to prison policy because he was “not close enough to his earliest release date.” Then, Page explained, once respondent was eligible to participate in services, there was “a wait list” for many of the services. While in prison, respondent had some telephone calls with LGM, but she did not want to speak with him.

DHHS petitioned for termination on December 22, 2015, and a termination hearing was held on February 11, 2016. At the termination hearing, respondent testified that, by that time, he had begun participating in some prison services, including Narcotics Anonymous and Alcoholics Anonymous, anger management, a violence prevention program, and employment readiness testing. He was also scheduled to begin training in the building trades and carpentry. In respondent’s opinion, he could complete his parent treatment plan within three to four months of his release and he would be “more than capable” of caring for LGM. Respondent asserted that he tried to maintain contact with LGM while incarcerated but that LGM’s grandmother interfered with his efforts.

In comparison, Page agreed that respondent had been working on the programs available to him in prison and she testified that there was nothing else he could be working on while incarcerated. However, Page also testified that respondent’s earliest release date of August of 2016 was not guaranteed, and she opined that respondent would not be able to provide a safe, secure and stable home for LGM within a reasonable time given LGM’s age. Page emphasized that respondent had not been a stable parent for LGM. At the time of the hearing he was unable to provide suitable housing or income for LGM’s support, he had been incarcerated for the majority of the case, he offered no plan or support for LGM during his period of incarceration, and he had not even seen LGM in almost two years. At that time, LGM was still placed with her grandmother, who wished to adopt LGM.

After considering the evidence presented, the trial court concluded that statutory grounds for termination existed under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (h), and (j). The trial court acknowledged the recent efforts respondent had made while in prison, but the court emphasized respondent’s failure to participate and benefit from services during those times when he was not incarcerated. The court also noted respondent’s substance abuse history, the uncertainty of his release date, his failure to provide for LGM, his failure to fully complete any component of his service plan, his lack of a meaningful relationship with LGM, and his failure to visit LGM during

those times when he was not incarcerated. According to the trial court, after two years, “we’re no closer to reunification than we were when [LGM] was first brought into care.”

With regard to LGM’s best interests, the trial court acknowledged LGM’s placement with a relative, but concluded that termination was nonetheless in her best interests because respondent had not demonstrated a wish to be reunified with the child. The court found that there was no parental bond between respondent and LGM. In contrast, LGM had spent half her life with her grandmother, she was thriving and strongly bonded with her grandmother, and her grandmother was willing to plan long term for LGM. Given LGM’s young age and the length of time she had been out of respondent’s care, the trial court concluded that termination was in LGM’s best interests. Having determined that statutory grounds for termination existed and that termination was in LGM’s best interests, the trial court terminated respondent’s parental rights.<sup>1</sup> Respondent now appeals as of right.

## II. STANDARD OF REVIEW

“This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). Likewise, the trial court’s best interests determination is reviewed for clear error. *Id.* at 713. A finding is clearly erroneous “if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

## III. STATUTORY GROUNDS FOR TERMINATION

The trial court terminated respondent’s parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (h), and (j). On appeal, respondent argues that the trial court’s findings regarding the statutory grounds for termination were clearly erroneous because the DHHS failed in its responsibility to make reasonable efforts to reunite him with LGM.

Before a petitioner may seek termination of parental rights, unless aggravating circumstances not present in this case exist, the petitioner must make reasonable efforts to reunite parent and child. MCL 712A.19a(2); *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013). This obligation to engage a parent does not end because a parent is incarcerated. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Absent reasonable efforts, the DHHS lacks clear and convincing evidence to support the statutory grounds for termination, and termination will be considered premature. *Id.*; *In re Hicks/Brown*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2016) (Docket No. 328870), slip op at 1. However, when the DHHS provides a parent with services, there exists a commensurate responsibility of the parent to participate and benefit from the services offered. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

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<sup>1</sup> The trial court also terminated the parental rights of LGM’s mother. However, the respondent-mother is not a party to this appeal.

In this case, the DHHS crafted a parent treatment plan for respondent aimed at addressing his numerous barriers to reunification. During those periods when he was not incarcerated, respondent was referred for services and offered visitation with LGM. However, respondent wholly failed to avail himself of these opportunities. After respondent's arrest and incarceration, the DHHS continued to engage respondent as much as possible given his incarceration. That is, Page remained in contact with respondent while he was incarcerated. Respondent was afforded telephone contact with LGM. Subject to prison policies and waitlist limitations, respondent was also able to engage in numerous programs, including AA, NA, anger management, a violence prevention program, and employment readiness testing. Page testified that she did not know of any other services currently available for respondent to participate in while he was incarcerated. In short, we find nothing clearly erroneous in the trial court's conclusion that the DHHS made reasonable efforts toward reunification.

Ultimately, it is not the DHHS's lack of assistance to respondent, but his own failure to make significant progress which prompted the trial court's termination of his parental rights. Two years after LGM's removal from his home, respondent remained unable to provide her with a safe and stable home. He lacked income and housing. He had yet to fully complete any component of his treatment plan. He was incarcerated and he had no plan for LGM's care.<sup>2</sup> His earliest possible release date was still months away and, by his own optimistic estimate, he would need another 3 to 4 months after his release to complete his treatment plan. Moreover, while respondent had apparently made some recent efforts and he maintained that he could continue to improve, tellingly, this recent progress was made while incarcerated and he had shown himself unwilling to participate in services—or to even visit LGM—during those times when he was not in prison. Given these facts, the trial court did not clearly err by concluding that the conditions which led to the adjudication continued to exist and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering LGM's age. Thus, termination was proper under MCL 712A.19b(3)(c)(i).<sup>3</sup>

#### IV. BEST INTERESTS

Finally, respondent argues that the trial court clearly erred in finding that termination of his parental rights was in LGM's best interests. Respondent contends that LGM's maternal grandmother thwarted his efforts to maintain a relationship with LGM. He also argues that the trial court failed to explicitly consider the fact that LGM was placed with a relative and the possibility of continuing this temporary placement.

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<sup>2</sup> Respondent's relationship with LGM's maternal grandmother was contentious, and not the type of relative care plan during incarceration that weighs against termination of parental rights. Cf. *In re Mason*, 486 Mich at 164-165.

<sup>3</sup> Only one statutory ground for termination need be shown by clear and convincing evidence. *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000). Thus, we need not consider the additional grounds identified by the trial court. *Id.*

Before terminating parental rights, the trial court must find by a preponderance of evidence that termination is in the child's best interests. MCL 712A.19b(5); *Moss*, 301 Mich App at 90. The trial court does so by analyzing a wide variety of factors, which include the child's bond to the parent, parenting ability, the child's need for permanency, stability, and finality, and a comparison between the parent's home and the child's foster home. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). If applicable, a trial court must "explicitly address whether termination is appropriate in light of the children's placement with relatives," a factor that weighs against termination. *Id.* at 43. See also MCL 712A.19a(6)(a). "Other considerations include the length of time the child was in care" and "the likelihood that the child could be returned to her parents' home within the foreseeable future, if at all." *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 64; 874 NW2d 205 (2015) (quotation marks omitted). Finally, the court may also consider "the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 713-714.

In this case, the trial court did not clearly err by finding that termination was in LGM's best interests. As found by the trial court, LGM had no significant parental bond with respondent. LGM had been out of respondent's care for half of her life, she was thriving with her grandmother, and she desperately needed stability and permanency that her grandmother could provide. Indeed, her grandmother had expressed an interest in long term planning for LGM, including the possibility of adoption, while respondent had proven unable to provide LGM with a stable home. Contrary to respondent's arguments on appeal, the trial court expressly addressed LGM's placement with her grandmother, concluding that this relative placement should not prevent termination in this case because respondent had done nothing "to show that [he] wish[ed] to be reunified with [LGM]." In sum, there was nothing clearly erroneous in the trial court's best interests determination, and the trial court did not clearly err by terminating respondent's parental rights.

Affirmed.

/s/ Douglas B. Shapiro  
/s/ Joel P. Hoekstra  
/s/ Amy Ronayne Krause